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Candace Havens
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MEMORANDUM

Date: May 25, 2012

To: Alderman Marcia T. Johnson, Chairman, and
Members of the Zoning and Planning Committee

From: Candace Havens, Director of Planning and Development 
Trisha Kenyon Guditz, Housing Program Manager

Re: Establishing an Affordable Housing Trust in Newton

Meeting Date: May 29, 2012

CC: Board of Aldermen
Alice Ingerson, Community Preservation Act Program Manager

Introduction

Over a six-month period in 2009-2010, a subcommittee of the Newton Housing Partnership (NHP) met to discuss ways to streamline the process used by the City of Newton to provide federal HOME and Community Development Block Grant funds (CDBG) and local Community Preservation Funds for affordable housing development. The Streamlining Affordable Housing subcommittee, was chaired by Lynne D. Sweet and included Philip Herr, Josephine McNeil, Daniel Violi, Grace Twesigye, a Boston College Law Fellow, Eunice Kim, a Masters of Urban Planning graduate student at the time, and Planning and Development Department housing staff, Robert Muollo and Trisha Kenyon Guditz.

The subcommittee's charge and the benefit of a housing trust

The purpose of convening the subcommittee was to determine if there were other, more efficient and less time-intensive ways to provide the financial subsidies necessary to develop affordable rental and ownership housing in Newton. Most affordable housing developers rely on multiple sources of financing to complete a project and a protracted development process adds to the overall cost of development. Waiting for public funding sources to be available can be a measurable cost if it results in additional carrying costs such as mortgage interest and can, in some cases, require a bridge loan until all the permanent financing is secured. The premise that streamlining the public funding process is an important objective is based on the understanding that smaller developments, like the ones that typically access local and

Federal funds, are the least able to absorb the costs that result from a lengthy development process.

In trying to determine the most efficient vehicle to streamline the funding process, the subcommittee evaluated the suitability and efficacy of the City's inclusionary zoning ordinance (30-24(f)), the Newton Community Development Authority with its State enabling authority to develop housing, and the use of a community land trust model. After a number of conversations, the subcommittee decided that establishing an affordable housing trust provided the greatest opportunity to streamline the City's existing funding process as it relates to the approval of Community Preservation Funds for community housing projects; generally, the review and approval process for the commitment of federal funds to housing projects is approximately three to four months. Instead, the subcommittee focused on how to expedite the Community Preservation Funds funding process since it can take anywhere from six months to over a year.

The purpose of this memo is to provide some general information on municipal affordable housing trusts and suggest some parameters to consider in designing a trust for the City. This initiative is aligned with the affordable housing goals and objectives in both the *Newton Comprehensive Plan*, adopted by the Board of Aldermen in 2007, and the *FY11-15 Consolidated Plan*, which was reviewed by the Planning and Development Board with final approval by the Mayor.¹

Background on affordable housing trusts

The Municipal Affordable Housing Trust Fund Law at MGL c.44, s. 55C was passed by the State legislature in 2005. The purpose of creating a municipal affordable housing trust is to support the creation and preservation of affordable housing in municipalities for the benefit of low- and moderate-income households. Prior to 2005, communities could only create trusts through a home rule petition, which required approval from the State legislature.

Under the statute, a trust is considered (1) a public employer (and the board of trustee members are public employees) for the purposes of Chapter 258 (claims and indemnity procedures) and (2) a municipal agency (and the trustees are special municipal employees) for the purposes of chapter 268A (conduct of public officials and employees).

Board of Trustees

Trusts are usually managed by a nonprofit organization or a governmental agency and the statute requires that a board of trustees be established to manage and oversee it. The board must include at least five members including the chief executive officer or designee. The

¹ The *Consolidated Plan* is submitted to the U.S. Department of Housing and Urban Development by the City and is a mandatory requirement for continuing to secure approximately \$4 million dollars in federal HOME, CDBG and Emergency Solutions Grant funds per year.

remaining trustees are appointed by the chief executive officer subject to municipality's legislative body; in Newton this body is the Board of Aldermen. Trustees serve for a term not to exceed two years with the exception of the chief executive officer. In considering the number of members and composition of a trust, the NHP subcommittee proposes a seven-member model with the trustees determining the membership composition. Some considerations for membership could include individuals with experience in housing development, planning, architecture, real estate and finance/lending.

Powers of the Board of Trustees

Under the statute, a trust has broad powers characterized as "...the creation and preservation of affordable housing." Therefore, eligible uses of a trust can include acquisition, rehabilitation, new construction, preservation and pre-development costs. To this end, a municipal affordable housing trust can:²

- Accept and receive real property, personal property, or money by gift, grant, contribution, devise or transfer from a range of entities.
- Purchase, own and manage real estate property.
- Sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract.
- Execute, acknowledge, and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts and other instruments incident to any transaction in which the board uses for the accomplishment of the purposes of the trust.

Either by ordinance or by-law, a municipality can exclude or modify any of the powers identified in the statute and can also grant additional powers to the board if they are consistent with the purposes of the statute.

Capitalizing an affordable housing trust

Trusts can essentially act as a funding mechanism and are typically capitalized by dedicated, recurring and non-recurring revenue sources. Some possible sources of funding an affordable housing trust, subject to existing processes such as aldermanic approval, can include:

- Community Preservation Funds
- Inclusionary zoning funds
- Direct appropriations
- Donations/bequests
- Loan repayments

Establishing an affordable housing trust

Establishing an affordable housing trust in Newton requires a majority of the Board of Aldermen to vote to accept the provisions of the enabling legislation, MGL c. 44, s. 55C. In the same or a subsequent action, the Board of Aldermen must specify how many members will constitute the board of trustees and the initial length of their terms (not to exceed

² Not a complete list.

two years, except for the chief executive officer). In addition, the Board of Aldermen may specify the make-up of the trust board and omit, modify, or add to the powers authorized by the statute. Following the Aldermanic vote(s), individuals are appointed to the board of trustees by the Mayor, subject to confirmation by the Board of Aldermen.

Considerations in designing an affordable housing trust

As proposed by the Newton Housing Partnership Subcommittee, the trust would initially be capitalized with Community Preservation Funds and proceeds from cash payments made under the inclusionary zoning ordinance. For seed money for a trust to be considered in the next round of applications, pre-applications to the Community Preservation Committee are due July 1, 2012. A final application would be due November 2, 2012.

The subcommittee offers the following programmatic framework for consideration:

- Eligible projects can include single - family houses, condominiums, multi-family residential and mixed-use developments, group residences and single - room occupancy units.
- The sources of funding that capitalize the trust determine the programmatic, regulatory and/or statutory requirements for the use of trust funds.
- The trust can fund affordable housing projects that provide rental and homeownership opportunities for low- and moderate-income individuals and households. Municipalities may define what constitutes low- and moderate-income. In the case of Community Preservation Funds, the upper income limit is under 100 percent of area median income.
- Projects that are developable by right, as well as those which require a comprehensive permit or a special permit are eligible for trust funds.
- Funding thresholds should generally be consistent with development costs in projects that access City CDBG and HOME Program funds.
- Trust funds can be allocated on a rolling basis and applicants are required to complete the City One-Stop application.
- The trust will be staffed by the Planning and Development Department (housing staff) and the trustees will be encouraged to adopt the existing project review model which includes review by a multi-department Development Review Team.

NEXT STEPS

Staff asks that the Committee consider the possibility of establishing an affordable housing trust, while the CPC considers whether seed monies could be provided in that event. Staff will return to the Committee for further discussion after obtaining more information about funding and prior to requesting action on this proposal.